


Carolyn Taylor, Esq., (State Bar No. 159347)  
Gay L. Meixel, Esq. (State Bar No. 227245)  
**MORRIS POLICH & PURDY, LLP**  
501 West Broadway, Suite 500  
San Diego, CA 92101-3544  
Telephone: (619) 557-0404  
Facsimile: (619) 557-0460  
Ctaylor@mpplaw.com

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SOUTHERN DISTRICT OF CALIFORNIA  
BY   
DEPUTY

Attorneys for Defendant Smith & Nephew, Inc.  
(erroneously sued as Smith & Nephew, Inc.,  
aka Smith & Nephew Richards, Inc.)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

**KIMBERLY DAUBNER,**


Plaintiff,

v.

**SMITH & NEPHEW, INC., aka SMITH  
& NEPHEW RICHARDS, INC., a  
corporation; and Does 1 to 50, Inclusive**

**Defendants.**

CASE NO. 06 CV 2461L NLS

**STIPULATED PROTECTIVE  
ORDER FOR THE PROTECTION  
OF CONFIDENTIAL  
INFORMATION AND   
ORDER**

**ORDER**

WHEREAS, the parties hereto have stipulated to the entry of this Protective Order to protect confidential documents produced by Defendant Smith & Nephew, Inc. (erroneously sued as Smith & Nephew, Inc., aka Smith & Nephew Richards, Inc.) (hereinafter "Smith & Nephew") and for good cause shown, IT IS HEREBY AGREED that each of the parties and their respective counsel shall be governed by the following terms and conditions concerning Confidential Information in the above-captioned action:

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. Prior to giving access to any person falling within subparagraphs 6(d) or 6(f) or 6(g) to Discovery Material designated as confidential pursuant to paragraph 2 of

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**STIPULATED PROTECTIVE ORDER FOR THE PROTECTION OF CONFIDENTIAL INFORMATION AND  
[PROPOSED] ORDER**

Case No. 06CV 2461L NLS

1 this Order, counsel for the party intending to disclose such confidential Discovery  
2 Material shall furnish a copy of this Order to the person being given access. Any person  
3 falling within subparagraphs 6(d) or 6(f) or 6(g) being given access to Confidential  
4 Discovery Material shall execute a copy of this Protective Order in the space provided  
5 on Exhibit A. The counsel obtaining the signature on Exhibit A shall retain the signed  
6 copy during the pendency of the Litigation.

7 2. Persons producing Discovery Material may designate as confidential  
8 Discovery Material containing trade secrets or other confidential research, development,  
9 proprietary or commercial information ("Confidential Discovery Material") only to the  
10 extent that such designation falls within the scope of discovery pursuant to the  
11 applicable Rules of Civil Procedure and Code of Civil Procedure.

12 3.

13 a. Confidential Discovery Material, if a writing, shall have the  
14 following language stamped on the face or the back of the writing, or shall otherwise  
15 have such language clearly marked:

16 **"THIS IS A CONFIDENTIAL DOCUMENT PRODUCED**  
17 **IN THE CASE OF DAUBNER v. SMITH & NEPHEW,**  
18 **INC., ET AL., UNITED STATES DISTRICT COURT,**  
19 **SOUTHERN DISTRICT OF CALIFORNIA, CASE NO.**  
20 **06CV2461L. THIS DOCUMENT BELONGS TO SMITH &**  
21 **NEPHEW, INC. AND IS ONLY BEING USED IN**  
22 **CONNECTION WITH THIS CASE. THE DOCUMENT IS**  
23 **PRODUCED PURSUANT TO A PROTECTIVE ORDER**  
24 **IN CONNECTION WITH DISCLOSURE OF**  
**CONFIDENTIAL INFORMATION AND IS ONLY TO BE**  
**USED PURSUANT TO THE TERMS SET FORTH**  
**THEREIN. THE DOCUMENT MAY NOT BE**  
**DISSEMINATED OR REPRODUCED IN ANY WAY**  
**THAT IS INCONSISTENT WITH THE PROTECTIVE**  
**ORDER."**

25 b. In the case of deposition testimony, confidentiality designations shall  
26 be made within thirty (30) days after the transcript has been received by counsel making  
27 the designation, and shall specify the testimony being designated confidential by page  
28 and line number(s). Until the expiration of such 30-day period, the entire text of the

1 deposition including all testimony therein and exhibits thereto (except for exhibits that  
2 were previously produced without being marked confidential), shall be treated as  
3 confidential under this Protective Order. After the expiration of the 30-day period, only  
4 the specific page(s) and line number(s) and exhibits, designated as being confidential, if  
5 any, shall be treated as confidential.

6 c. In the event that the producing person inadvertently fails to designate  
7 Discovery Material as confidential in this litigation, it may make such a designation  
8 subsequently by notifying all parties to whom such Discovery Material was produced, in  
9 writing, as soon as practicable. After receipt of such notification, the parties to whom  
10 production has been made shall treat the designated Discovery Material as confidential,  
11 subject to their right to dispute such designation in accordance with paragraph 10 hereof.  
12 However, no use of Discovery Material prior to such notification shall be deemed a  
13 violation of this Order.

14 4. In the event that any question is asked at a deposition which a party or  
15 nonparty asserts calls for confidential information, such question shall nonetheless be  
16 answered by the witness fully and completely, to the extent required by law. Counsel for  
17 the deponent shall, either at the deposition or within thirty (30) days after receipt of the  
18 transcript thereof by said counsel, notify all counsel on the record or in writing, that the  
19 information provided in such answer is confidential.

20 5. All persons receiving or given access to Confidential Discovery Material in  
21 accordance with the terms of this Protective Order consent to the continuing jurisdiction  
22 of the Court for the purposes of enforcing this Protective Order and remedying any  
23 violations thereof.

24 6. Confidential Discovery Material shall not be disclosed to anyone other than  
25 the following categories of persons:

26 a. The Court (and any appellate court), including court personnel, jurors,  
27 and alternate jurors.

28 ///

1 b. With respect to Confidential Discovery Material produced by Smith  
2 & Nephew, plaintiffs' attorneys in this Litigation, including the paralegal, clerical,  
3 secretarial and other staff employed or retained by such counsel.

4 c. Court reporters (including persons operating video recording  
5 equipment at depositions) and persons preparing transcripts of testimony to the extent  
6 necessary to prepare such transcripts.

7 d. Retained experts, advisors and consultants (including persons  
8 directly employed by such experts, advisors and consultants), but only to the extent  
9 necessary to perform their work in connection with this Litigation.

10 e. The author or recipient of the Confidential Discovery Material.

11 f. Such persons as the undersigned counsel shall consent to in writing  
12 before the proposed disclosure.

13 g. Any person whose testimony has been noticed or subpoenaed, or  
14 who has been designated as a witness at a deposition or at trial. The Confidential  
15 Discovery Material may be disclosed to such persons before, during or after their  
16 testimony, so long as prior to the disclosure the witness has agreed to abide by the terms  
17 of this Protective Order as set forth in paragraph 2 and the disclosure is made in good  
18 faith. However, if the witness is currently an employee, officer, director, contractor,  
19 subcontractor or consultant of any entity that is presently engaged or in the future may  
20 be engaged in the research, development, manufacture or sale of any product that  
21 competes with or is similar to any and all products researched, developed, manufactured  
22 or sold by Smith & Nephew, including but not limited to Smith & Nephew's Reflection  
23 Shell and Reflection Liner, the party seeking the testimony must also first receive the  
24 written consent of the counsel for the party disclosing the Confidential Discovery  
25 Material, or obtain an Order from the Court permitting the disclosure to the witness.

26 h. In addition, the parties may view Confidential Discovery Material so  
27 long as prior to the disclosure the individual wishing to view the material has agreed to  
28 abide by the terms of this Protective Order as set forth in Paragraph 2.

1           7. All outside counsel, in-house counsel, plaintiff's counsel, defendant's  
2 counsel, in-house paralegals and the employees and assistants of all counsel receiving  
3 discovery shall take all steps reasonably necessary to prevent the disclosure of  
4 Confidential Discovery Material other than in accordance with the terms of this Order.

5           8. Disclosure of Confidential Discovery Material other than in accordance  
6 with the terms of this Protective Order may subject the disclosing person to such  
7 sanctions and remedies as the Court may deem appropriate.

8           9.

9           a. All Discovery Material designated as confidential under this Order,  
10 shall retain that designation and be treated as confidential in accordance with the terms  
11 hereof unless and until:

12           i.) The producing party agrees in writing that the material is no  
13 longer confidential and subject to the terms of this Order; or

14           ii.) This Court enters an Order that the matter shall not be entitled  
15 to confidential status and that Order is not subject to an appellate stay within  
16 twenty (20) days after it is issued.

17           b. In the event that Discovery Material marked as confidential loses its  
18 confidential status, that Discovery Material shall not be treated as confidential. The  
19 producing party shall re-produce the Discovery Material with a new bates number, and  
20 without a confidential marking.

21           c. The parties shall negotiate in good faith before filing any motion  
22 relating to this Order.

23           10.

24           a. Nothing shall be filed under seal, and the court shall not be required  
25 to take any action, without separate prior order by the Judge before whom the hearing or  
26 proceeding will take place, after application by the affected party with appropriate  
27 notice to opposing counsel.

28       ///

1 b. The Court may modify the protective order in the interests of justice  
2 or for public policy reasons.

3 11. The terms of this Order shall survive and remain in effect after the  
4 termination of this Litigation. The parties shall take such measures as are necessary and  
5 appropriate to prevent the public disclosure of Confidential Discovery Material, through  
6 inadvertence or otherwise, after the conclusion of this Litigation.

7 12. Within thirty (30) days of the termination of this Litigation as to the  
8 producing party, including all appeals, the parties shall return to counsel for the  
9 producing party the Confidential Discovery Material produced by the other party and all  
10 copies thereof.

11 13. This Order does not restrict or limit the use of Confidential Discovery  
12 Material at any hearing or trial. Nothing in this Order, however, shall prevent any party  
13 from seeking an appropriate protective order to govern such use of Confidential  
14 Discovery Material at a hearing or trial.

15 14. Jurisdiction and Choice of Law. The parties and any other person or entity  
16 subject to the terms of this Order agree that the United States District Court, Southern  
17 District of California shall have jurisdiction over it and them for the purposes of  
18 enforcing this Agreement, notwithstanding any subsequent disposition of this Action.  
19 The parties and any other person or entity subject to the terms of this Agreement further  
20 agree that California law shall govern any action to enforce relating to this Agreement.

21 15. This Confidentiality Agreement may be signed in counterparts.

22  
23 Dated: June , 2007

THORSNES BARTOLOTTA McGUIRE

24  
25 By: 

Kevin F. Quinn

Alyson B. Taub

Attorneys for Plaintiff

Kimberly Daubner

1 Dated: <sup>July</sup> June 8, 2007

MORRIS POLICH & PURDY, LLP

2  
3 By: Carolyn Taylor  
4 Carolyn Taylor  
5 Gay L. Meixel  
6 Attorneys for Defendant  
Smith & Nephew, Inc.

7 IT IS SO ORDERED.

8  
9 Dated: 7-23-07

10 Nita L. Stormes  
11 Magistrate Judge Nita L. Stormes  
12 United States District Court  
13 Southern District of California  
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1 **EXHIBIT A**

2 **ENDORSEMENT OF PROTECTIVE ORDER**

3 I hereby attest to my understanding that information or documents designated  
4 confidential are provided to me subject to the Protective Order for the Protection of  
5 Confidential Information dated \_\_\_\_\_, \_\_\_\_\_ (the  
6 "Protective Order"), in the above-captioned litigation; that I have been given a copy of  
7 and have read the Protective Order, and that I agree to be bound by its terms. I also  
8 understand that my execution of this Protective Order, indicating my agreement to be  
9 bound by the Protective Order is a prerequisite to my review of any information or  
10 documents designated as confidential pursuant to the Protective Order.

11 I further agree that I shall not disclose to others, except in accord with the  
12 Protective Order, any Confidential Discovery Material, in any form whatsoever, and  
13 that such Confidential Discovery Material and the information contained therein may be  
14 used only for the purposes authorized by the Protective Order.

15 I further agree and attest to my understanding that my obligation to honor the  
16 confidentiality of such Discovery Material and information will continue even after this  
17 litigation concludes.

18 I further agree and attest to my understanding that, if I fail to abide by the terms  
19 of the Protective Order, I may be subject to sanctions, including contempt of court, for  
20 such failure. I agree to be subject to the jurisdiction of the United State District Court,  
21 Southern District of California for the purposes of any proceedings relating to  
22 enforcement of the Protective Order.

23 I further agree to be bound by and to comply with the terms of the Protective  
24 Order as soon as I sign this Agreement, whether or not the Protective Order has yet been  
25 entered as an Order of the Court.

26 Dated: \_\_\_\_\_

27 Signed: \_\_\_\_\_

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